IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 13, 2003 Session

SALLY BISHOP v. SCOTT MILNER

Direct Appeal from the Chancery Court for Anderson County
No. 01CH1896 Hon. William E. Lantrip, Judge

FILED JUNE 19, 2003

No. E2002-01357-COA-R3-CV

The Trial Court ruled the New Jersey Divorce Court retained jurisdiction of the case where a New Jersey decree had been enrolled in the Tennessee Court. Appellant argues the Trial Court failed to make a record of conversation with the New Jersey Judge in accordance with Tenn. Code Ann. §36-6-213. We vacate and remand.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Vacated.

HERSCHEL PICKENS FRANKS, J. delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and D. MICHAEL SWINEY, J., joined.

Lori F. Fleishman, Knoxville, Tennessee, for Appellant.

Billy P. Sams, Oak Ridge, Tennessee, for Appellee.

OPINION

This action originated with the filing of a Petition for Registration, Enrollment and Enforcement of Consent Order Fixing Custody, Dual Judgment of Divorce and Subsequent Orders, by the mother, Sally Bishop. The Trial Court entered an Order on April 24, 2002, registering and enrolling the New Jersey orders, and the Order further stated that the Trial Court would communicate with the New Jersey Court regarding jurisdiction pursuant to Tenn. Code Ann. §36-6-213, prior to ruling on any subsequent motions for modification or enforcement of the orders. Subsequently, the Trial Court filed an Opinion which states "I have discussed the above matter with Judge Herr of the

Superior Court of New Jersey, . . . who desires to retain jurisdiction of this case. I find that there exists a sound basis for the New Jersey Court to retain jurisdiction and therefore defer to the New Jersey Court where extensive litigation has been undertaken."

Tenn. Code Ann. §36-6-213 is a part of the Uniform Child Custody Jurisdiction and Enforcement Act, and provides:

> (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this part.
>
> (b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
>
> (c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.
>
> (d) Except as otherwise provided in subsection (c) , a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.
>
> (e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

The mother argues that the Court erred in failing to make a record pursuant to subsection (d), or that if such a record was made, the Court erred in failing to grant the parties access to it. Subsection (e) defines a "record" as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The Comments to Official Text state that a record must be made of the conversation, and the parties must have access to the record "in order to be informed of the content of the conversation." The Comments further provide that a record can be "notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication."

No Tennessee case interpreting this statute has been called to our attention, but the California Court of Appeals has interpreted this section of the Uniform Act dealing with communications between courts. *See In re C.T.*, 121 Cal. Rptr. 2d 897 (Cal. Ct. App. 2002). In the California case, one party asserted that the trial court erred in failing to make a proper record of its communication with the foreign court, but the appellate court recognized that the court had "described" the conversations in subsequent memoranda, or had described the conversations on a

record at a hearing. *Id*. The court found that these records were sufficient, because the conversations were described in detail as to their substance, and that a verbatim transcript was not required. *Id*.

In this case, the only "record" that we have of the trial court's communication with the New Jersey court is the document titled "Opinion". This Opinion does not detail the substance of the "communication", nor does it inform the parties of the "content of the conversation", in fact, the Opinion indicates there was some discussion regarding the New Jersey Court's basis for jurisdiction, as the Trial Court found said basis is "sound". We hold that a "proper record" of the conversation between the judges has not been furnished to the parties pursuant to statute.

Upon remand, the Trial Court is directed to furnish the parties with a detailed memorandum of the conversation between the judges, or if an electronic record was made, to furnish the parties with a copy of that transcript. Otherwise, the Trial Court is directed to initiate another conversation with the New Jersey Judge, and make a recording of the conversation and furnish it to the parties pursuant to the statute.

Finally, the mother argues that the Court violated the statute, by failing to provide the parties with an opportunity to present facts and arguments before a decision on jurisdiction was made. In view of our ruling vacating the jurisdictional order, the parties will have an opportunity to present facts and legal arguments on the issue of jurisdiction, pursuant to Tenn. Code Ann. §36-6-213(b), after they have been furnished a proper record.

The Order of the Trial Court is vacated and the cause remanded for further proceedings consistent with this Opinion. The cost of the appeal is assessed to Scott Milner.

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HERSCHEL PICKENS FRANKS, J.